

No. 4355

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United States

10

# Circuit Court of Appeals

For the Ninth Circuit.

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CHARLES FORNI,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

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## Transcript of Record.

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Upon Writ of Error to the Southern Division of the  
United States District Court of the  
Northern District of California,  
First Division.

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FILED

OCT 16 1924

F. D. MONKTON,

CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

PRESTON & DUNCAN, Esqs., Hobart Bldg., San  
Francisco, Cal., H. S. YOUNG, Esq., R. G.  
HUDSON, Esq., for Defendant and Plaintiff  
in Error.

UNITED STATES ATTORNEY, San Francisco,  
California.

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In the Southern Division of the United States Dis-  
trict Court for the Northern District of Cali-  
fornia, First Division.

No. 13,126.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

CHARLES FORNI and GEO. BLAKE,  
Defendants.

PRAECIPE FOR TRANSCRIPT ON WRIT OF  
ERROR.

To the Clerk of the Above-entitled Court:

Please prepare transcript of record to be used on  
writ of error in the above-entitled cause and include  
therein the following:

1. Information.
2. Arraignment.
3. Plea of defendant, Charles Forni.

4. Petition for return of personal property (Commissioner's No. 1389); affidavit in support thereof; answer of Government thereto and affidavit in support of said answer; order to show cause; order submitting said petition and order denying the same.
5. Petition for exclusion of evidence; affidavit in support thereof; answer of Government thereto and affidavit in support thereof; order submitting said petition; and order denying the same.
6. Record of trial.
7. Verdict of jury.
8. Judgment of Court.
9. Clerk's certificate to judgment-roll.
10. Petition for writ of error.
11. Assignment of errors. [1\*]
12. Citation on writ of error.
13. Return thereto.
14. Order allowing writ of error and supersedeas.
15. Cost bond on appeal.
16. Bill of exceptions.
17. Writ of error (original).
18. Admission of service of citations on writ of error.
19. Admission of service of writ of error.
20. Stipulation extending time on bill of exceptions.
21. This praecipe.

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\*Page-number appearing at foot of page of original certified Transcript of Record.

22. Clerk's certificate to transcript of record.

PRESTON & DUNCAN,  
H. S. YOUNG,  
R. G. HUDSON,

Attorneys for Defendant, Charles Forni.

Due service and receipt of a copy of the within admitted this 30 day of Sept., 1924.

STERLING CARR,  
Attorney for (Plaintiff).

[Endorsed]: Filed Sep. 30, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[2]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. (13,126).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI and GEORGE BLAKE,  
Defendants.

### INFORMATION.

At the March term of said Court in the year of our Lord one thousand nine hundred and twenty-three,—

BE IT REMEMBERED that John T. Williams, United States Attorney for the Northern District of California, by and through Kenneth M. Green,

Special Assistant United States Attorney, who for the United States in its behalf prosecutes in his own proper person, comes into court on this, the 21st day of March, 1923, and with leave of the said Court first having been had and obtained, gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath, and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof;

NOW, THEREFORE, your informant presents:  
THAT

CHARLES FORNI and GEORGE BLAKE, hereinafter called the defendants, heretofore, to wit, on or about the 26th day of December, 1922, at 2933 Webster St., in the city and county of San Francisco, in the Southern Division [3] of the Northern District of California, and within the jurisdiction of this court, then and there being, did then and there wilfully and unlawfully maintain a common nuisance in that the said defendants did then and there wilfully and unlawfully keep for sale on the premises aforesaid, certain intoxicating liquor, to wit: 25 cases of Scotch whiskey; 5-50 gal. bbls. of whisky; 1-50 gal. bbl. of whisky, containing about 4 in. in the bottom; 1-50 gal. bbl. part full of sherry wine; 18-50 gal. bbls. red wine; 2-175 gal. puncheons of red wine; 1-10 gal. bbl. of alcohol; 2-50 gal. bbls. of grape brandy; 11-5 gal. jugs of

wine; 93 qt. bottles of red wine; 1-2 gal. jug white wine; 15 empty bbls., then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the keeping for sale of the said intoxicating liquor by the said defendants at the time and place aforesaid, was then and there prohibited, unlawful and in violation of Section 21 of Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act."

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

### SECOND COUNT.

And informant further gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath, and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof.

[4]

NOW, THEREFORE, your informant presents: that Charles Forni and George Blake, hereinafter called the defendants, heretofore, to wit, on or about the 26th day of December, 1922, at 2933 Webster St., in the city and county of San Francisco, in the Southern Division of the Northern District

of California, and within the jurisdiction of this court, then and there being, did then and there wilfully and unlawfully possess certain intoxicating liquor, to wit: 25 cases of Scotch whisky; 5-50 gal. bbls. of whisky, 1-50 gal. bbl. of whisky, containing about 4 in. in the bottom; 1-50 gal. bbl. part full of sherry wine; 18-50 gal. bbls. red wine; 2-175 gal. puncheons of red wine; 1-10 gal. bbl. of alcohol; 2-50 gal. bbls. of grape brandy; 11-5 gal. jugs of wine; 93 qt. bottles of red wine; 1-2 gal. jug of white wine; 15 empty gallon barrels, then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the possession of the said intoxicating liquor by the said defendants at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

JOHN T. WILLIAMS,

United States Attorney.

KENNETH M. GREEN,

Special Asst. United States Attorney. [5]

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

I. H. Cory, being first duly sworn, deposes and

says: that Charles Forni and George Blake, on or about the 26th day of December, 1922, at 2933 Webster St., city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, did then and there maintain a common nuisance in that the said defendants did then and there keep for sale on the premises at 2933 Webster St., aforesaid, certain intoxicating liquor, to wit: 25 cases of Scotch whisky; 5-50 gal. bbls. of whisky, 1-50 gal. bbl. of whisky, containing about 4 in. in the bottom; 1-50 gal. bbl. part full of sherry wine; 18-50 gal. bbls. red wine; 2-175 gal. puncheons of red wine; 1-10 bbl. of alcohol; 2-50 gal. bbls. of grape brandy; 11-5 gal. jugs of wine; 93 qt. bottles of red wine; 1-2 gal. jug of white wine; 15 empty gallon bbls., then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the keeping for sale of the said intoxicating liquor by the said defendants at the time and place aforesaid, was then and there prohibited, unlawful and in violation of Section 21 of Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act."

And affiant on his oath aforesaid further deposes and says: that Charles Forni and George Blake, on or about the 26th day of December, 1922, at 2933 Webster St., city and county of San Francisco, in the Southern Division of [6] the Northern District of California, and within the jurisdiction of this court, did then and there possess certain intoxi-

cating liquor, to wit: 25 cases of Scotch whisky; 5-50 gal. bbls. of whisky; 1-50 gal. bbl. of whisky, containing about 4 in. in the bottom; 1-50 gal. bbl. part full of sherry wine; 18-50 gal. bbls. red wine; 2-175 gal. puncheons of red wine; 1-10 gal. bbl. of alcohol; 2-50 gal. bbls. of grape brandy; 11-5 gal. jugs of wine; 93 qt. bottles of red wine; 1-2 gal. jug of white wine; 15 empty gallon bbls., then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the possession of the said intoxicating liquor by the said defendants was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act."

I. H. CORY.

Subscribed and sworn to before me this 20th day of March, 1923.

[Seal]

C. M. TAYLOR,

Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed Mar. 20, 1923. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.  
[7]



At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Monday, the 2d day of April, in the year of our Lord one thousand nine hundred and twenty-three. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 13,126.

UNITED STATES OF AMERICA

vs.

CHARLES FORNI et al.

MINUTES OF COURT—APRIL 2, 1923—ARRAIGNMENT AND PLEA.

This case came on regularly for arraignment of defendant Charles Forni, who was present with his attorney. G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of the United States. Said defendant was duly arraigned upon information filed herein, stated true name to be as contained therein, waived formal reading thereof and thereupon plead "Not Guilty" of offense charged, which plea the Court ordered and the same is hereby entered. On motion of Mr. Fink, further ordered trial set for Apr. 19, 1923. [8]

In the District Court of the United States, in and  
for the Northern District of the State of Cali-  
fornia, First Division.

CHARLES FORNI,

Plaintiff,

vs.

SAMUEL RUTTER, as the Duly Qualified and  
Acting Prohibition Director for the State of  
California, and D. W. RINCKEL, JOHN  
DOE and RICHARD ROE, His Agents,  
Defendants.

PETITION FOR RETURN OF PERSONAL  
PROPERTY.

To the Honorable the Above-entitled Court.

The petition of Charles Forni respectfully shows that the said Samuel Rutter now is and was at all times herein mentioned the duly qualified and acting Prohibition Director for the State of California, and that at all times herein mentioned the above-named D. W. Rinckel, John Doe and Richard Roe, were the duly authorized and acting agents of said Samuel Rutter, as such Prohibition Director. That the true names of the defendants John Doe and Richard Roe are unknown to petitioner and that upon ascertaining the same said petitioner will move this Court for an order amending this petition accordingly.

I.

That he is now and was at all times herein men-

tioned the owner of and entitled to the immediate possession of the following described personal property, to wit: [9]

25 cases of Scotch whisky.

5-50 gallon bbls. of whisky.

1-50 gallon bbl. of whiskey containing about 4 in.  
in the bottom.

1-50 gallon bbl. part full of sherry wine.

18-50 gallon bbls. of red wine.

2-175 puncheons of red wine.

1-10 gallon bbl. of alcohol.

1-5 gallon can of alcohol.

2-50 gallon bbls. of grape brandy.

11-5 gallon jugs of wine.

93 quart bottles of red wine.

1-2 gallon jug of white wine.

15 empty gallon bbls.

1 Hydrometer and glass tube.

## II.

That on the 26th day of December, 1922, Samuel Rutter as the duly qualified and acting Prohibition Director for the State of California, thru his agents, D. W. Rinckel, John Doe and Richard Roe, entered the private dwelling-house of petitioner, situate on the premises known as 2933 Webster Street, San Francisco, California, and seized and carried away therefrom the said personal property for an alleged violation of the so-called National Prohibition Act of the statutes of the United States, to wit: Possession by petitioner of said personal property without evidence of a tax having been paid thereon.

## III.

That at the time said personal property was seized as aforesaid, and that at all times on the 26th day of December, 1922, that the said premises together with the outhouse in the rear of the said premises were actually occupied by your petitioner as his private dwelling-house.

## IV.

Petitioner is informed and believes, and therefore alleges that the United States Government proposes to destroy said personal property, and that said personal property will [10] be destroyed by said United States Government unless the same is returned to petitioner.

WHEREFORE, petitioner prays that an order be made directing said Samuel Rutter as such Prohibition Director for the State of California, and said D. W. Rinckel, John Doe and Richard Roe, his agents, and John T. Williams as United States Attorney for the Northern District of California, and each of them to appear before the above-entitled Court to show cause, if any they have, why the said personal property should not be returned to petitioner and that upon the hearing of this petition that said *personal* be returned to your petitioner.

CHARLES FORNI,  
Petitioner.

H. S. YOUNG,  
Attorney for Petitioner.

State of California,  
City and County of San Francisco,—ss.

Charles Forni, being first duly sworn, deposes and says that he is the petitioner named in the foregoing petition; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters therein alleged on his information and belief, and as to those matters he believes them to be true.

CHARLES FORNI.

Subscribed and sworn to before me this 6th day of March, 1923.

[Seal] JENNIE DAGGETT,  
Notary Public in and for the City and County of  
San Francisco, State of California. [11]

[Endorsed]: Filed Mar. 13, 1923. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[12]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

CHARLES FORNI and GEORGE BLAKE,  
Defendants.

AFFIDAVIT IN SUPPORT OF PETITION  
FOR RETURN OF PERSONAL PROP-  
ERTY.

Charles Forni, being first duly sworn, deposes and says:

That he is one of the defendants in the above-entitled action.

That on the 26th day of December, 1922, by virtue of an affidavit for that purpose made by one D. W. Rinkle, a certain search-warrant was issued by Hon. Thomas E. Hayden, United States Commissioner for the Northern District of California, by virtue of which the premises therein described were entered and searched and by virtue of which the personal property described in the petition for the return therefor now pending in the above-entitled proceeding, was seized and taken from the premises of affiant, who at said time was and now is the owner thereof.

That on said 26th day of December, 1922, and for a period of about three years thereto affiant and his [13] brother, Louis Forni, actually resided upon said premises and that on said date and for a period of about three years prior thereto affiant and his brother actually occupied the entire premises described in said search-warrant as their private dwelling-house and for no other purpose or purposes.

That said premises consists of a certain two-story frame building and the basement thereof and an outhouse as shed about 30 feet directly in the rear

of said building and which cannot be seen from said Webster Street.

That said building and said shed are within a common enclosure.

That said basement and said shed from time to time during said period, and in particular on the said 26th day of December, 1922, were used by affiant and his said brother for the purpose of therein storing, in addition to said property seized as aforesaid, their personal effects such as furniture, clothing, pictures and the automobile of affiant.

That said D. W. Rinkle gained access to said shed by scaling a wall surrounding same.

That any and every visit made by said D. W. Rinkle to said premises and any and every search thereof and any and every seizure of any property therefrom was without the consent of and against the will of affiant.

CHAS. FORNI.

Subscribed and sworn to before me this 2d day of July, 1923.

[Seal]      DAISY CROTHERS WILSON,  
Notary Public in and for the City and County of  
San Francisco, State of California. [14]

[Endorsed]: Filed Jul. 10, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[15]

In the District Court of the United States, for the  
Northern District of the State of California,  
First Division.

CHARLES FORNI,

Plaintiff,

vs.

SAMUEL RUTTER, as the Duly Qualified and  
Acting Prohibition Director for the State  
of California, and D. W. RINCKEL, JOHN  
DOE and RICHARD ROE, His Agents,  
Defendants.

### ORDER TO SHOW CAUSE.

Upon the reading and filing in the office of the clerk of the above-entitled court, the petition of Charles Forni for the return to petitioner of said personal property in said petition described, and upon motion of H. S. Young, attorney for said petitioner, and good cause appearing therefor,—

IT IS HEREBY ORDERED that Samuel Rutter, as such Prohibition Director for the State of California, and D. W. Rinckel, John Doe, Richard Roe, his agents, and John T. Williams, as United States Attorney for the Northern District of California, be and each of them appear before the above-entitled court, on the 22d day of March, 1923, at the hour of ten o'clock A. M. of said day then and there to show cause, if any they have, why said personal property should not be returned to said petitioner, and



It is further ordered that a copy of said petition together with a copy of this order be served upon said Samuel [16] Rutter, as Prohibition Director for the State of California, and D. W. Rinckle, his agents, and John T. Williams, as United States Attorney for the Northern District of California, on or before the 17th day of March, 1923.

Dated: March 14, 1923.

R. S. BEAN,  
Judge of Said District Court.

[Endorsed]: Filed Mar. 14, 1923. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[17]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

CHARLES FORNI and GEORGE BLAKE,  
Defendants.

ANSWER TO PETITION FOR RETURN OF  
PERSONAL PROPERTY.

Comes now, the above-named plaintiff by John T. Williams, as United States Attorney in and for the Northern District of the State of California, acting for and in behalf of said plaintiff and Samuel

F. Rutter, as Federal Prohibition Director in and for the State of California, and for answer to the petition of the petitioner herein, denies and alleges as follows:

Denies that the Prohibition Agents or either or any of them entered the private dwelling-house of petitioner and therein seized and carried away or therein seized or carried away any of the personal property mentioned and described in petitioner's petition herein, but in this connection alleges the fact to be that the said Prohibition Agents entered a garage and an outbuilding or shed, each of which was disconnected from the dwelling-house of petitioner herein.

Denies that the said petitioner is entitled to have the said intoxicating liquor mentioned and described in petitioner's petition herein returned to him, and in this connection alleges the facts to be as set out in the affidavit of D. W. Rinckel which said affidavit is hereto attached, made part hereof, and marked Exhibit "A," to the same effect as if the same were herein again set out in full. [18]

WHEREFORE respondent prays that said petition be denied.

JOHN T. WILLIAMS,  
United States Attorney,  
BEN F. GEIS,  
Asst. U. S. Attorney,  
Attorneys for Plaintiff. [19]

EXHIBIT "A."

In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI and GEORGE BLAKE,

Defendants.

AFFIDAVIT IN OPPOSITION TO PETITION  
FOR RETURN OF PERSONAL PROPERTY.

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

D. W. Rinckel, being first duly sworn, deposes and says: That he is, and at all of the times herein mentioned was a Federal Prohibition Agent, and acting as such under the Federal Prohibition Director for the State of California, to wit, Samuel F. Rutter.

That there is, and at all of the times herein mentioned was a building located at No. 2933 Webster Street in the said city and county of San Francisco; that underneath the said building there is a garage which is disconnected from any other portion of the building in that there is no ingress or egress therefrom to any other portion of the building; and

that the main entrance into the said garage is on and from the said Webster St.

That prior to the 26th day of December, 1922, affiant and other Prohibition Agents had reliable information that intoxicating liquor, to wit, whisky, containing one-half of one per cent and more of alcohol by volume and fit for use for beverage purposes, was stored, sold and delivered from the garage herein above mentioned as being underneath the building at No. 2933 Webster [20] Street in said city and county of San Francisco.

That pursuant to said information and on the 26th day of December, 1922, affiant and another Prohibition Agent went to the said premises, and affiant looking through an open door saw in plain sight in said garage about twenty-five cases of intoxicating liquor, to wit, Scotch whisky, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, which said intoxicating liquor in the said garage was in cases and which said cases were marked: "D. T. Company, Vancouver, B. C.," the said 25 cases each containing 12 bottles. That the said intoxicating liquor was untax paid and contained no Internal Revenue Stamps whatever. That on the rear of said premises in a shed affiant then and there saw through an open door: five 50-gallon barrels of intoxicating liquor, to wit, whisky; one fifty-gallon barrel containing approximately five gallons of intoxicating liquor, to wit, whisky, one 50-gallon barrel half full of intoxicating liquor, to wit, sherry wine, eighteen fifty-gallon barrels of in-

toxicating liquor, to wit, red wine, one 10-gallon barrel of intoxicating liquor, to wit, alcohol, one 5-gallon can of intoxicating liquor, to wit, alcohol, two *fifty barrels* of intoxicating liquor, to wit, grape brandy, eleven 5-gallon jugs of intoxicating liquor, to wit, wine, 93 quart bottles of intoxicating liquor, to wit, red wine and one 2-gallon jug of intoxicating liquor, to wit, white wine, all of which said intoxicating liquor then and there contained one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes; and fifteen empty 50-gallon barrels, one hydrometer and one glass gauge tube.

That thereafter, and on the said 26th day of December, 1922, affiant secured a search-warrant based upon the above facts, and with said search-warrant entered the said garage and seized the said intoxicating liquor therein, to wit, the said twenty-five cases of intoxicating liquor, and entered the said shed and then [21] and there seized the intoxicating liquor heretofore listed as being contained therein. That all of the said barrels, including those that contained liquor as well as the empty barrels, were marked "Vancouver, B. C.," and all of said intoxicating liquor including the said empty barrels and hydrometer and glass gauge, are now in the possession of Samuel F. Rutter as Prohibition Director in and for the State of California.

That affiant did not, nor did any of the other Prohibition Agents present at any time enter the dwelling of the said defendant. That affiant saw intoxicating liquor in the residence of the said defendant, but affiant did not, nor did any of the other

Prohibition Agents search for, seize or attempt to seize any of the intoxicating liquor in the said residence of the said defendant.

That at the time of the search and seizure under the said search-warrant affiant then and there arrested one of the defendants herein, to wit, George Blake, for a violation of the said National Prohibition Act, and the said George Blake then and there stated to affiant that he was the owner of the said intoxicating liquor so seized. That thereafter on said 26th day of December, 1922, approximately one-half hour after the above said arrest, the defendant, Charles Forni, came to said premises and affiant then and there arrested the said defendant for a violation of the said National Prohibition Act, and the said Charles Forni, then and there stated to affiant that he was the owner of the said intoxicating liquor so seized. That at all times herein mentioned said liquor was illicit and contraband.

That thereafter, and heretofore an information was filed charging the said George Blake and Charles Forni with having in their possession the above-mentioned intoxicating liquor, all of which then and there contained one-half of one per cent and more of alcohol by volume and then and there fit for use for beverage purposes.

D. W. RINCKEL.

Subscribed and sworn to before me March 21, 1923.

C. M. TAYLOR. [22]

[Endorsed]: Filed Mar. 21, 1923. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [23]

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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Saturday, the 15th day of September, in the year of our Lord one thousand nine hundred and twenty-three. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 1389.

(U. S. Commissioner Case.)

UNITED STATES OF AMERICA

vs.

CHARLES FORNI.

MINUTES OF COURT—SEPTEMBER 15, 1923  
—ORDER DENYING MOTION TO RETURN PROPERTY.

After hearing attorneys for respective parties, ordered motion for return of personal property denied. [24]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI and GEORGE BLAKE,

Defendants.

PETITION TO EXCLUDE EVIDENCE.

To the Honorable, the Above-entitled Court:

The petition of Charles Forni respectfully shows:

That Samuel F. Rutter is and was at all of the times herein mentioned the duly qualified and acting Prohibition Director of the State of California, and that at all times herein mentioned D. W. Rinckel, John Doe and Richard Roe were and are the duly authorized and acting agents of said Samuel F. Rutter as such Prohibition Director; that the true names of said John Doe and Richard Roe are unknown to petitioner and that said names are fictitious and that upon ascertaining the same petitioner will move this Court for an order amending this petition accordingly.

That he is now and was at all times herein mentioned the owner of and entitled to immediate possession of the following described personal property, to wit:



25 cases of Scotch whiskey.

5-50 gallon bbls. of whisky.

1-50 gallon bbl. of whiskey containing about 4 in.  
in the bottom.

1-50 gallon bbl. part full of Sherry wine. [25]

18-50 gallon bbls. of red wine.

2-175 gallon puncheons of red wine.

1-10 gallon bbl. of alcohol.

1-5 gallon can of alcohol.

2-50 gallon bbls. of grape brandy.

11-5 gallon jugs of wine.

93 quart bottles of red wine.

1-2 gallon jug of white wine.

15 empty gallon bbls.

1 hydrometer and glass tube.

That on the 26th day of December, 1922, said Samuel F. Rutter, as such Prohibition Director, through his agents, D. W. Rinckel, John Doe and Richard Roe, unlawfully entered the private dwelling of petitioner situate in and upon the premises known as No. 2933 Webster Street, San Francisco, California, and unlawfully seized and carried away therefrom the said personal property for an alleged violation of the so-called National Prohibition Act, to wit, the unlawful possession by your petitioner of intoxicating liquors.

That at the time said personal property was seized as aforesaid and at all times on the 26th day of December, 1922, the said premises, together with the outhouse in the rear of the same, were actually occupied by your petitioner as his private dwelling-house; that said search and said seizure

were made in violation of the rights secured to your petitioner by virtue of the Fourth and Fifth Amendments to the Constitution of the United States of America and Section 25 of the National Prohibition Act, all of which is more particularly set forth in Exhibit "A," which is attached hereto and made part hereof.

That upon the trial of the above-entitled action United States of America intends to and will use, unless prohibited by an order of this Court, said personal property in evidence against your petitioner.

WHEREFORE, your petitioner prays that an order be made prohibiting the United States of America from introducing said [26] personal property in evidence at the trial of said action.

CHARLES FORNI,  
Petitioner.

FRANK T. O'NEILL,  
H. S. YOUNG,

Attorneys for Petitioner. [27]

EXHIBIT "A."

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
CHARLES FORNI and GEORGE BLAKE,  
Defendants.

AFFIDAVIT IN SUPPORT OF PETITION  
FOR RETURN OF PERSONAL PROP-  
ERTY.

State of California,

City and County of San Francisco,—ss.

Charles Forni, being first duly sworn deposes and says:

That he is one of the defendants in the above-entitled action,

That on the 26th day of December, 1922, by virtue of an affidavit for that purpose made by one D. W. Rinckel, a certain search-warrant was issued by Hon. Thomas E. Hayden, United States Commissioner for the Northern District of California, by virtue of which the premises therein described were entered and searched and by virtue of which the personal property described in the petition to include evidence on file in the above-entitled action, was seized and taken from the premises of affiant, who at said time was and now is the owner thereof.

That on said 26th day of December, 1922, and for a period of about three years thereto affiant and his brother, Louis Forni, actually resided upon said premises and that on said date and for a period of about three years prior thereto affiant and his [28] brother actually occupied the entire premises described in said search-warrant as their private dwelling-house and for no other purpose or purposes; and that said premises were never used in whole or in part for any business purpose and that

no sale of intoxicating liquors was ever made therein.

That said premises consists of a certain two-story frame building and the basement thereof and an outhouse or shed about 30 feet directly in the rear of said building and which cannot be seen from said Webster Street.

That said building and said shed are within a common enclosure.

That said basement and said shed from time to time during said period, and in particular on the said 26th day of December, 1922, were used by affiant and his said brother for the purpose of therein storing, in addition to said property seized as aforesaid, their personal effects such as furniture, clothing, pictures and the automobile of affiant.

That said D. W. Rinckel, John Doe and Richard Roe gained access to said shed by scaling a wall surrounding same.

That any and every visit made by said D. W. Rinckel, John Doe and Richard Roe, to said premises and any and every search thereof and any and every seizure of any property therefrom was without the consent of and against the will of affiant and his said brother.

CHARLES FORNI.

Subscribed and sworn to before me this 7th day of April, 1924.

[Seal]

JOHN McCALLAN,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Apr. 7, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[29]

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At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Thursday, the 10th day of April, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable JOHN S. PARTRIDGE, District Judge.

No. 13,126.

UNITED STATES OF AMERICA

vs.

CHARLES FORNI and GEORGE BLAKE.

MINUTES OF COURT—APRIL 10, 1924—  
TRIAL.

This case came on regularly this day for trial of defendants upon information filed herein against them. Defendant Charles Forni was present with his attorneys. Defendant George Blake was absent. J. F. McDonald, Esq., Asst. U. S. Atty., was present for and on behalf of United States. Court ordered that trial proceed and that the jury-box be filled from the regular panel of trial jurors of this court. Accordingly, the hereinafter named persons, having been duly drawn by lot, sworn, ex-

amined, and accepted, were duly sworn as jurors to try this case, viz.:

Thos. H. Fallon,	W. V. Harrington.
B. F. Bickel,	Granville D. Abbott.
Adolph C. Boldeman.	H. J. Brown,
C. L. McFarland,	Edson F. Adams,
W. T. Dickerman.	John A. Keating.
Theophilus Allen.	W. E. Amann.

Mr. McDonald made a statement to the Court and jury as to the nature of the case and called Mr. Rinckel, who was duly sworn and examined for United States, and rested.

Attorney for defendant moved the Court for order excluding evidence, which motion the Court ordered denied. Defense then called Enrico Pasozzi and S. Forni, who were each sworn and examined for defense, and rested. [30]

Case was then argued by counsel for respective parties and submitted, whereupon the Court proceeded to instruct the jury herein, who, after being so instructed, retired at 2:40 P. M. to deliberate upon a verdict, and subsequently returned into court at 3:35 P. M., and upon being called all twelve (12) jurors answered to their names and were found to be present and, in answer to question of the Court, stated they had agreed upon a verdict and presented a written verdict which the Court ordered filed and recorded, viz.:

“We, the jury, find the defendants at the bar as follows: Charles Forni Guilty on 1st Count and

Guilty on 2d Count, George Blake Guilty on 1st Count and Guilty on 2d Count.

JOHN A. KEATING,  
Foreman.”

Court ordered that writ of attachment issue for arrest and appearance of defendant George Blake, returnable May 8, 1924, and that his bond heretofore given in this case be and the same is hereby forfeited. Ordered matter of judgment as to said defendant George Blake continued to May 8, 1924.

Defendant Charles Forni was then called for judgment, duly informed by the Court of the nature of the information filed herein, of his arraignment, plea, trial, and the verdict of the jury. Defendant was then asked if he had any legal cause to show why judgment should not be entered herein and thereupon attorney for defendant made a motion for new trial, which motion the Court ordered denied. Said attorney then made a motion in arrest of judgment, which motion the Court likewise ordered denied. Thereupon, no sufficient cause appearing why judgment should not be pronounced, the Court ordered that defendant Charles Forni, for offense of which he stands convicted, be imprisoned for period of one (1) year in the county jail, county of San Francisco, State of California, and that he pay a fine in sum of Five Hundred [31] (\$500.00) Dollars as to First Count and *ine* in sum of Five Hundred (\$500.00) Dollars as to Second Count of information, or, in default of payment of said fine, defendant be further imprisoned until said fine is paid or he be otherwise

discharged by due process of law. Further ordered that defendant stand committed to custody of U. S. Marshal to execute said judgment, and that a commitment issue. [32]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI and GEO. BLAKE,

Defendants.

### BILL OF EXCEPTIONS.

BE IT REMEMBERED, that heretofore, the United States Attorney in and for the Northern District of California, did file in the above-entitled court an information against the defendant, Charles Forni, and that, thereafter, the said Charles Forni appeared in court and upon being called to plead to said information, pleaded not guilty as shown by the records herein.

AND BE IT FURTHER REMEMBERED that the defendant, Charles Forni, who will hereinafter be called the defendant, having duly pleaded not guilty and the cause being at issue, the same coming on for trial on the 10th day of April, 1924, before



the Honorable John S. Partridge, Judge of the above-entitled court, and a jury impanelled, the United States being represented by the Hon. John T. Williams, United States Attorney, and J. Fred McDonald, Esq., Assistant United States Attorney, and the defendant being represented by Roy G. Hudson, Esq., and Frank T. O'Neill, Esq.

That after the arrest of the defendants herein and on or about Mar. 13, 1923, and prior to the filing of the information against them, the defendant Charles Forni caused to be filed in the above-entitled court a petition for the return of certain personal property seized at or about the time of his arrest; that said petition is in words and figures as follows, to wit: [33]

In the District Court of the United States, in and for the Northern District of the State of California, First Division.

(Commissioner Case No. 1389.)

CHARLES FORNI,

Plaintiff,

vs.

SAMUEL RUTTER, as the Duly Qualified and Acting Prohibition Director for the State of California, and D. W. RINCKEL, JOHN DOE, and RICHARD ROE, His Agents,  
Defendants.

PETITION FOR RETURN OF PERSONAL  
PROPERTY.

To the Honorable, the Above-entitled Court:

The petition of Charles Forni respectfully shows that the said Samuel Rutter now is and was at all times herein mentioned the duly qualified and acting Prohibition Director for the State of California, and at all times herein mentioned the above-named D. W. Rinckel, John Doe, and Richard Roe were the duly authorized and acting agents of said Samuel Rutter, as such Prohibition Director; that the true names of the defendants John Doe and Richard Roe are unknown to petitioner and that upon ascertaining the same said petitioner will move this Court for an order amending this petition accordingly.

I.

That he is now and was at all times herein mentioned the owner of and entitled to the immediate possession of the following described personal property, to wit:

25 cases of Scotch whiskey.

5- 50 gallon bbls. of whiskey.

1- 50 " bbl. of whiskey containing about 4 in  
the bottom.

1- 50 gallon bbl. part full of Sherry wine.

18- 50 " bbls. of red wine.

2-175 " Puncheons of red wine.

1- 10 " bbl. of alcohol.

1- 5 " can of alcohol.

- 2- 50 “ bbls. of grape brandy.
- 11- 5 “ jugs of wine. [34]
- 93 quart bottles of red wine.
- 1-2 gallon jug of white wine.
- 15 empty gallon bbls.
- 1 hydrometer and glass tube.

II.

That on the 26th day of December, 1922, Samuel Rutter, as the duly qualified and acting Prohibition Director for the State of California, through his agents, D. W. Rinckel, John Doe and Richard Roe, entered the private dwelling-house of petitioner situate on premises known as 2933 Webster Street, San Francisco, California, and seized and carried away therefrom the said personal property for an alleged violation of the so-called National Prohibition Act of the statutes of the United States, to wit: Possession by petitioner of said personal property without evidence of a tax having been paid thereon.

III.

That at the time said personal property was seized as aforesaid, and that at all times on the 26th day of December, 1922, that the said premises together with the outhouse in the rear of the said premises were actually occupied by your petitioner as his private dwelling-house.

IV.

Petitioner is informed and believes, and therefore alleges that the United States Government proposes to destroy said personal property, and that said personal property will be destroyed by said United

States Government unless the same is returned to petitioner.

WHEREFORE, petitioner prays that an order be made directing said Samuel Rutter as such Prohibition Director for the State of California, and said D. W. Rinckel, John Doe and Richard Roe, his agents, and John T. Williams as United States Attorney for the Northern District of California, and each of them to appear before the above-entitled court to show cause, if any they have, why the said personal property should not be returned [35] to your petitioner.

CHARLES FORNI,  
Petitioner.

H. S. YOUNG,  
Attorney for Petitioner.

[Endorsed]: Filed Mar. 13, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [36]

State of California,  
City and County of San Francisco,—ss.

Charles Forni, being first duly sworn, deposes and says: That he is the petitioner named in the foregoing petition and that he has read the same and knows the contents thereof, and that the same is true of his own knowledge except as to such matters therein alleged on information and belief and as to those matters he believes them to be true.

CHARLES FORNI.

Subscribed and sworn to before me this 6th day of March, 1923.

JENNIE DAGGETT,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Mar. 13, 1923. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

That in support of said petition for the return of personal property, said defendant filed his affidavit in support thereof, which affidavit is in words and figures as follows, to wit: [37]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

(No. 1389.—Commr.)

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

CHARLES FORNI and GEORGE BLAKE,  
Defendants.

AFFIDAVIT IN SUPPORT OF PETITION  
FOR RETURN OF PERSONAL PROPERTY.

Charles Forni, being first duly sworn, deposes and says:

That he is one of the defendants in the above-entitled action.

That on the 26th day of December, 1922, by virtue of an affidavit for that purpose made by one D. W. Rinkle, a certain search-warrant was issued by Hon. Thomas E. Hayden, United States Commissioner for the Northern District of California, by virtue of which the premises therein described were entered and searched and by virtue of which the personal property described in the petition for the return therefor now pending in the above-entitled proceeding, was seized and taken from the premises of affiant, who at said time was and now is the owner thereof.

That on said 26th day of December, 1922, and for a period of about three years thereto affiant and his brother, Louis Forni, actually resided upon said premises and that on said date and for a period of about three years prior thereto affiant and his brother actually occupied the entire premises described in said search-warrant as their private dwelling-house and for no other purpose or purposes.

That said premises consist of a certain two-story frame building and the basement thereof and an outhouse as shed about 30 feet directly in the rear of said building and which cannot be [38] seen from said Webster Street.

That said building and said shed are within a common enclosure.

That said basement and said shed from time to time during said period, and in particular on the said 26th day of December, 1922, were used by affiant and his said brother for the purpose of therein

storing, in addition to said property seized as aforesaid, their personal effects such as furniture, clothing, pictures and the automobile of affiant.

That said D. W. Rinkle gained access to said shed by scaling a wall surrounding same.

That any and every visit made by said D. W. Rinkle to said premises and any and every search thereof and any and every seizure of any property therefrom was without the consent of and against the will of affiant.

CHAS. FORNI.

Subscribed and sworn to before me this 2d day of July, 1923.

[Seal]      DAISY CROTHERS WILSON,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Jul. 10, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

That upon considering said petition the Hon. R. S. Bean, Judge of the United States District Court for the Northern District of California, Southern Division, caused an order to show cause to issue, which said order to show cause is in words and figures as follows, to wit: [39]

In the District Court of the United States, for the  
Northern District of the State of California,  
First Division.

(Commr. Case No. 1389.)

CHARLES FORNI,

Plaintiff,

vs.

SAMUEL RUTTER, as the Duly Qualified and  
Acting Prohibition Director for the State  
of California, and D. W. RINCKEL, JOHN  
DOE, and RICHARD ROE, His Agents,  
Defendants.

#### ORDER TO SHOW CAUSE.

Upon the reading and filing in the office of the  
Clerk of the above-entitled court, the petition of  
Charles Forni for the return to petitioner of said  
personal property in said petition described, and  
upon motion of H. S. Young, attorney for said peti-  
tioner, and good cause appearing therefor:

It is hereby ordered that Samuel Rutter, as such  
Prohibition Director for the State of California,  
and D. W. Rinckel, John Doe, Richard Roe, his  
agents, and John T. Williams, as United States  
Attorney for the Northern District of California,  
be and each of them appear before the above-enti-  
tled court on the 22d day of March, 1923, at the  
hour of ten o'clock A. M. of said day then and there  
to show cause, if any they have, why said personal



property should not be returned to said petitioner, and

It is further ordered that a copy of said petition together with a copy of this order be served upon said Samuel Rutter, as Prohibition Director for the State of California, and D. W. Rinckel, his agents, and John T. Williams, as United States Attorney for the Northern District of California, on or before [40] the 17th day of March, 1923.

Dated: March 14th, 1923.

R. S. BEAN,  
Judge of Said District Court.

[Endorsed]: Filed Mar. 14, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

That in opposition to the foregoing petition and affidavit and in answer to the foregoing order to show cause, the United States Attorney filed the following answer and affidavit: [41]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

(Commr. Case No. 1389.)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI and GEORGE BLAKE,

Defendants.

ANSWER TO PETITION FOR RETURN OF  
PERSONAL PROPERTY.

Comes now the above-named plaintiff by John T. Williams, as United States Attorney in and for the Northern District of the State of California, acting for and in behalf of said plaintiff and Samuel F. Rutter, as Federal Prohibition Director in and for the State of California, and for answer to the petition of the petitioner herein, denies and alleges as follows:

Denies that the Prohibition Agents or either or any of them entered the private dwelling-house of petitioner and therein seized and carried away or therein seized or carried away any of the personal property mentioned and described in petitioner's petition herein, but in this connection alleges the fact to be that the said Prohibition Agents entered a garage and an outbuilding or shed, each of which was disconnected from the dwelling-house of petitioner herein.

Denies that the said petitioner is entitled to have the said intoxicating liquor mentioned and described in petitioner's petition herein returned to him, and in this connection alleges the facts to be as set out in the affidavit of D. W. Rinckel which said affidavit is hereto attached, made part hereof, and marked Exhibit "A," to the same effect as if the same were herein again set out in full. [42]

WHEREFORE respondent prays that said petition be denied.

JOHN T. WILLIAMS,  
United States Attorney,  
BEN F. GEIS,  
Asst. U. S. Attorney,  
Attorney for Plaintiff. [43]

EXHIBIT "A."

In the Southern Division of the United States District Court for the Northern District of California, First Division.

(Commr. Case No. 1389.)

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

CHARLES FORNI and GEORGE BLAKE,  
Defendants.

AFFIDAVIT IN OPPOSITION TO PETITION  
FOR RETURN OF PERSONAL PROPERTY.

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

D. W. Rinckel, being first duly sworn, deposes and says: That he is, and at all of the times herein mentioned was a Federal Prohibition Agent, and acting as such under the Federal Prohibition Di-

rector for the State of California, to wit, Samuel F. Rutter.

That there is, and at all of the times herein mentioned was a building located at No. 2933 Webster Street in said City and County of San Francisco; that underneath the said building there is a garage which is disconnected from any other portion of the building in that there is no ingress or egress, therefrom, to any other portion of the building; and that the main entrance into the said garage is on and from the said Webster St.

That prior to the 26th day of December, 1922, affiant and other Prohibition Agents had reliable information that intoxicating liquor, to wit, whiskey, containing one-half of one per cent and more of alcohol by volume and fit for use for beverage purposes, was stored, sold and delivered from the garage hereinabove mentioned as being underneath the building at No. 2933 Webster [44] Street in said city and county in San Francisco.

That pursuant to said information and on the 26th day of December, 1922, affiant and another Prohibition Agent went to the said premises, and affiant looking through an open door saw in plain sight in said garage about twenty-five cases of intoxicating liquor, to wit, Scotch whiskey, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, which said intoxicating liquor in the said garage was in cases and which said cases were marked: "D. T. Company, Vancouver, B. C.," the said 25 cases each contained 12 bottles. That the said intoxicat-

ing liquor was untax paid and contained no Internal Revenue Stamps whatever. That on the rear of said premises in a shed affiant then and there saw through an open door; five 50-gallon barrels of intoxicating liquor, to wit, whiskey; one fifty-gallon barrel containing approximately five gallons of intoxicating liquor, to wit, whiskey, one 50-gallon barrel half full of intoxicating liquor, to wit, Sherry wine, eighteen fifty-gallon barrels of intoxicating liquor, to wit, red wine, one 10-gallon barrel of intoxicating liquor, to wit, alcohol, one 5-gallon can of intoxicating liquor, to wit, alcohol, two *fifty barrels* of intoxicating liquor, to wit, grape brandy, eleven 5-gallon jugs of intoxicating liquor, to wit, wine, 93 quart bottles of intoxicating liquor, to wit, red wine, and one 2-gallon jug of intoxicating liquor, to wit, white wine, all of which said intoxicating liquor, then and there contained one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes; and fifteen empty 50-gallon barrels, one hydrometer and one glass gauge tube.

That thereafter, and on the said 26th day of December, 1922, affiant secured a search-warrant based upon the above facts, and with said search-warrant entered the said garage and seized the said intoxicating liquor therein, to wit, the said [45] twenty-five cases of intoxicating liquor, and entered the said shed and then and there seized the intoxicating liquor heretofore listed as being contained therein. That all of the said barrels including those that contained liquor as well as the

empty barrels, were marked "Vancouver, B. C." and all of said intoxicating liquor including the said empty barrels and hydrometer and glass gauge, are now in the possession of Samuel F. Rutter as Prohibition Director in and for the State of California.

That affiant did not, nor did any of the other Prohibition Agents present, at any time enter the dwelling of said defendant. That affiant saw intoxicating liquor in the residence of the said defendant, but affiant did not, nor did any of the other Prohibition Agents search for, seize or attempt to seize any of the intoxicating liquor in the said residence of the said defendant.

That at the time of the search and seizure under the said search-warrant affiant then and there arrested one of the defendants herein, to wit, George Blake, for a violation of the said National Prohibition Act, and the said George Blake then and there stated to affiant that he was the owner of the said intoxicating liquor so seized. That thereafter on said 26th day of December, 1922, approximately one-half hour after the above said arrest, the defendant, Charles Forni, came to said premises and affiant then and there arrested the said defendant for a violation of the said National Prohibition Act, and the said Charles Forni then and there stated to affiant that he was the owner of the said intoxicating liquor so seized. That at all times herein mentioned said liquor was illicit and contraband.

That thereafter, and heretofore an information was filed charging the said George Blake and

Charles Forni with having in their possession the above-mentioned intoxicating liquor, all of which then and there contained one-half of one [46] per cent and more of alcohol by volume and then and there fit for use for beverage purposes.

D. W. RINCKEL.

Subscribed and sworn to before me March 21, 1923.

G. M. TAYLOR.

[Endorsed]: Filed Mar. 21, 1923. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

That upon the hearing of said petition for the return of personal property, the search-warrant in question and the affidavit upon which it was procured, were also produced and considered by the Court, which said search-warrant and affidavit are in words and figures as follows, to wit:

### SEARCH-WARRANT.

United States of America,  
Northern *Division* of California,  
Southern Division,—ss.

To the Federal Prohibition Director for the State of California and His Deputies, or Any or Either of Them, GREETINGS:

WHEREAS, complaint on oath and in writing supported by affidavits has this day been made before me Thomas E. Hayden, a United States Commissioner for said district, by D. W. Rinckel alleging that he has reason to believe, that within

a certain house, store, or building in this district, to wit:

A certain basement garage at #2933 Webster Street, San Francisco, Calif., and an outhouse or shed on same lot in the rear, being the premises of parties unknown there is located certain property, to wit, certain illicit liquors which is being used as a means of committing a misdemeanor, to wit, a violation of the National Prohibition Act of the statutes of the United States.

And whereas the particular grounds or probable cause for the issuance of this warrant and the names of the persons whose affidavits have been taken in support hereof are as follows:

That on the 26th day of December, 1922, your affiant visited the said premises and saw quantities of liquors, without evidence of tax being paid; that affiant has been informed that liquors are taken to and from said garage, both night and day; that affiant has reason to believe from said information and from inspection of said garage that liquors containing in excess of  $\frac{1}{2}$  per cent alcohol, illegally acquired, are stored and traded in from said garage.

And whereas the undersigned is satisfied of the existence of the grounds of said application, or that there is probable cause to believe their existence  
[47]

YOU ARE THEREFORE HEREBY COMMANDED, in the name of the President of the United States, to enter said premises at any time of the day or night with the necessary and proper



assistance, and forthwith search the same, if found, bring before the undersigned, and to report and act concerning the same as required by you by law.

Witness my hand and seal this 26th day of December, 1922.

(Signed) THOMAS E. HAYDEN,  
United States Commissioner Aforesaid.

San Francisco, Calif. Dec. 26th, 1922.

I have this day searched the within described premises and found, to wit:

- 25 cases of Scotch whiskey.
- 8- 50 gallon bbls. of whiskey.
- 1- 50 " bbl. of whiskey containing about  
4 in the bottom.
- 1- 50 " bbl. part full of Sherry wine.
- 18- 50 " bbls. of red wine.
- 2-175 " Puncheons of red wine.
- 1- 10 " bbl. of alcohol.
- 1- 5 " can of alcohol.
- 2- 50 " bbls. of grape brandy.
- 11- 5 " jugs of wine.
- 93 quart bottles of red wine.
- 1- 2 gallon jug of white wine.
- 15 Empty gallon bbls.
- 1 Hydrometer and glass tube.

D. W. RINCKEL,  
Federal Agent.

United States of America,  
Northern District of California,  
Southern Division,—ss.

On this 26th day of December, 1922, before me,  
Thomas E. Hayden, a United States Commissioner

for the Northern District of California, Southern Division, personally appeared D. W. Rinckel, who, being by me first duly sworn, did depose and say:

That he has reason to believe, and does believe, that within a certain house, store, building or other place, in the Northern District of California, to wit:

A certain basement garage at #2933 Webster Street, San Francisco, California, and an out-house or shed on same lot in the rear, being the premises of parties unknown, there is located certain property, to wit, illicit liquors which is being used as the means of committing a felony, to wit, a violation of the National Prohibition Act of the statutes of the United States; that the facts tending to establish the grounds of this application, and the probable cause of deponent believing that such facts exist are as follows:

That this affiant on the 26th day of December, 1922, visited said premises and saw quantities of liquors, without [48] evidence of tax being paid; that affiant has been informed that liquors are taken to and from said garage, both night and day; that affiant has reason to believe from said information and from inspection of the said garage that liquors in excess of 1/2 per cent alcohol illegally acquired, are stored and traded in from this garage.

(Signed) D. W. RINCKEL.

Sworn to before me this 26th day of December, 1922.

(Signed) THOMAS E. HAYDEN,

THOMAS E. HAYDEN,

United States Commissioner.

EXCEPTION No. 1.

That after hearing had on said motion and petition for the return of personal property, the Court denied said petition, to which ruling the defendant duly excepted.

That on the 10th day of April, 1924, the defendant filed his petition and made a motion for the exclusion of certain evidence, said petition and motion being in words and figures as follows, to wit:

(Title of Court and Cause.)

PETITION TO EXCLUDE EVIDENCE. [49]

“To the Honorable, the Above-entitled Court:

“The petition of Charles Forni respectfully shows:

“That Samuel F. Rutter is and was at all of the times herein mentioned the duly qualified and acting prohibition director of the State of California, and that at all times herein mentioned D. W. Rinckel, John Doe, and Richard Roe, were and are the duly authorized and acting agents of said Samuel F. Rutter as such prohibition director; that the true names of said John Doe and Richard Roe are unknown to petitioner and that said names are fictitious and that upon ascertaining the same petitioner will move this Court for an order amending this petition accordingly.

“That he is now and was at all times herein mentioned the owner of and entitled to immediate possession of the following described personal property, to wit:

- 25 cases of Scotch whiskey.
- 5- 50 gallon bbls. of whiskey.
- 1- 50 gallon bbl. of whiskey containing about 4  
in the bottom.
- 1- 50 gallon bbl. part full of Sherry wine.
- 18- 50 gallon bbls. of red wine.
- 2-175 gallon Puncheons of red wine.
- 1- 10 gallon bbl. of alcohol.
- 1- 5 gallon can of alcohol.
- 2- 50 gallon bbls. of grape brandy.
- 11- 5 gallon jugs of wine.
- 93 quart bottles of red wine.
- 1- 2 gallon jug of white wine.
- 15 empty gallon bbls.
- 1 Hydrometer and glass tube.

“That on the 26th day of December, 1922, said Samuel F. Rutter as such prohibition director thru his agents D. W. Rinckel, John Doe and Richard Roe unlawfully entered *and* private dwelling of petitioner situate in and upon the premises known as No. 2933 Webster Street, San Francisco, California, and unlawfully seized and carried away therefrom the said personal property for an alleged violation of the so-called National Prohibition Act, to wit, the unlawful possession by your petitioner of intoxicating liquors. [50]

“That at the time said personal property was seized as aforesaid and at all times on the 26th day of December, 1922, the said premises, together with the outhouse in the rear of the same, were actually occupied by your petitioner as his private dwelling-house; that said search and said seizures were made

in violation of the rights secured to your petitioner by virtue of the Fourth and Fifth Amendments to the Constitution of the United States of America and Section 25 of the National Prohibition Act, all of which is more particularly set forth in Exhibit 'A,' which is attached hereto and made a part hereof.

“That upon the trial of the above-entitled action United States of America intends to and will use, unless prohibited by an order of this Court, said personal property in evidence against your petitioner.

“WHEREFORE, your petitioner prays that an order be made prohibiting the United States of America from introducing said personal property in evidence at the trial of said action.

“CHARLES FORNI,  
“Petitioner.

“FRANK T. O'NEILL,  
“H. S. YOUNG,  
“Attorney for Petitioner.”

“[Endorsed]: Filed Apr. 7, 1924. W. B. Mal-  
ing, Clerk. C. W. Calbreath, Deputy Clerk.”

That in support of said petition and motion for the exclusion of evidence, the defendant introduced in evidence and filed his affidavit, which said affidavit is in words and figures as follows, to wit:

(Title of Court and Cause.)

AFFIDAVIT IN SUPPORT OF PETITION FOR  
RETURN OF PERSONAL PROPERTY.

State of California,

City and County of San Francisco,—ss.

Charles Forni, being first duly sworn, deposes and says: [51]

That he is one of the defendants in the above-entitled action.

That on the 26th day of December, 1922, by virtue of an affidavit for that purpose made by one D. W. Rinckel, a certain search-warrant was issued, by Hon. Thomas E. Hayden, United States Commissioner for the Northern District of California, by virtue of which the premises therein described were entered and searched and by virtue of which the personal property described in the petition to exclude evidence on file in the above-entitled action, was seized and taken from the premises of affiant, who at said time was and now is the owner thereof.

That on said 26th day of December, 1922, and for a period of about three years thereto affiant and his brother, Louis Forni, actually resided upon said premises and that on said date and for a period of about three years prior thereto affiant and his brother actually occupied the entire premises described in said search-warrant as their private dwelling-house and for no other purpose or purposes; and that said premises were never used in whole or in part for any business purpose and that

no sale of intoxicating liquors was ever made therein.

That said premises consist of a certain two-story frame building and the basement thereof and an outhouse or shed about 30 feet directly in the rear of said building and which cannot be seen from said Webster Street.

That said building and said shed are within a common enclosure.

That said basement and said shed from time to time during said period, and in particular on the said 26th day of December, 1922, were used by affiant and his said brother for the purpose of therein storing, in addition to said property seized as aforesaid, their personal effects such as furniture, clothing, pictures and the automobile of affiant. [52]

That said D. W. Rinckel, John Doe and Richard Roe gained access to said shed by scaling a wall surrounding same.

That any and every visit made by said D. W. Rinckel, John Doe and Richard Roe, to said premises and any and every search thereof and any and every seizure of any property therefrom was without the consent of and against the will of affiant and his said brother.

CHARLES FORNI.

Subscribed and sworn to before me this 7th day of April, 1924.

[Seal]

JOHN McCALLUM,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Apr. 7, 1924. W. B. Maling, Clerk. C. W. Calbreath, Deputy Clerk.

That to the foregoing petition, motion and affidavit the United States Attorney filed the following answer and affidavit in support thereof:

(Title of Court and Cause.)

### ANSWER TO PETITION FOR RETURN OF PERSONAL PROPERTY.

Comes now the above-named plaintiff by John T. Williams, as United States Attorney in and for the Northern District of the State of California, acting for and on behalf of said plaintiff and Samuel F. Rutter, as Federal Prohibition Director in and for the State of California, and for answer to the petition of the petitioner herein, denies and alleges as follows:

Denies that the Prohibition Agents or either or any of them entered the private dwelling-house of petitioner and therein seized and carried away or therein seized or carried away any of the personal property mentioned and described in petitioner's petition herein, but in this connection alleges the fact to be that the said Prohibition Agents entered a garage and an outbuilding or shed, each of which was disconnected from the dwelling-house of petitioner herein. [53]

Denies that the said petitioner is entitled to have the said intoxicating liquor mentioned and described in petitioner's petition herein returned to him, and in this connection alleges the facts to be as set out in the affidavit of D. W. Rinckel which



said affidavit is hereto attached, made part hereof, and marked Exhibit "A," to the same effect as if the same were herein again set out in full.

WHEREFORE respondent prays that said petition be denied.

JOHN T. WILLIAMS,  
United States Attorney.

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Asst. U. S. Attorney,  
Attorney for Plaintiff.

EXHIBIT "A."

(Title of Court and Cause.)

AFFIDAVIT IN OPPOSITION TO PETITION  
FOR RETURN OF PERSONAL PROPERTY.

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

D. W. Rinckel, being first duly sworn, deposes and says: That he is, and at all of the times herein mentioned was a Federal Prohibition Agent, and acting as such under the Federal Prohibition Director for the State of California, to wit, Samuel F. Rutter.

That there is, and at all of the times herein mentioned was a building located at No. 2933 Webster Street, in the said city and county of San Francisco; that underneath the said building there is a garage which is disconnected from any other portion of the building in that there is no ingress or egress therefrom to any other portion of the building;

and that the main entrance into the said garage is on and from the said Webster St.

That prior to the 26th day of December, 1922, affiant and other Prohibition Agents had reliable information that intoxicating liquor, to wit, whiskey, containing one-half of one per cent and more of alcohol by volume and fit for use for beverage purposes, [54] was stored, sold and delivered from the garage hereinabove mentioned as being underneath the building at No. 2933 Webster Street in said city and county of San Francisco.

That pursuant to said information and on the 26th day of December, 1922, affiant and another Prohibition Agent went to the said premises, and affiant looking thru an open door saw in plain sight in said garage about twenty-five cases of intoxicating liquor, to wit, Scotch whiskey, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, which said intoxicating liquor in the said garage was in cases and which said cases were marked: "D. T. Company, Vancouver, B. C.," and said 25 cases each contained 12 bottles. That the said intoxicating liquor was untax paid and contained no Internal Revenue Stamps whatever. That on the rear of said premises in a shed affiant then and there saw thru an open door, five 50-gallon barrels of intoxicating liquor, to wit, whiskey; one fifty-gallon barrel containing approximately five gallons of intoxicating liquor, to wit, whiskey, one 50-gallon barrel half full of intoxicating liquor, to wit, Sherry wine, eighteen fifty-gallon barrels of intoxi-

cating liquor, to wit, Red Wine, one 10-gallon barrel of intoxicating liquor, to wit, alcohol, one 5-gallon can of intoxicating liquor, to wit, alcohol, two *fifty barrels* of intoxicating liquor, to wit, grape brandy, eleven 5-gallon jugs of intoxicating liquor, to wit, wine, 93 quart bottles of intoxicating liquor, to wit, red wine, and one 2-gallon jug of intoxicating liquor, to wit, white wine, all of which said intoxicating liquor then and there contained one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes; and fifteen empty 50-gallon barrels, one hydrometer and one glass gauge tube.

That thereafter, and on the said 26th day of December, 1922, affiant secured a search-warrant based upon the above facts, and with said search-warrant entered the said garage and [55] seized the said intoxicating liquor therein, to wit, the said twenty-five cases of intoxicating liquor, and entered the said shed and then and there seized the intoxicating liquor heretofore listed as being contained therein. That all of the said barrels, including those that contained liquor as well as the empty barrels, were marked "Vancouver, B. C.," and all of said intoxicating liquor including the said empty barrels and hydrometer and glass gauge are now in the possession of Samuel F. Rutter as Prohibition Director in and for the State of California.

That affiant did not, nor did any of the other prohibition agents present at any time enter the dwelling of the said defendant. That affiant saw intoxicating liquor in the residence of the said de-

fendant, but affiant did not, nor did any of the other Prohibition Agents search for, seize or attempt to seize any of the intoxicating liquor in the said residence of the said defendant.

That at the time of the search and seizure under the said search-warrant affiant then and there arrested one of the defendants herein, to wit, George Blake, for violation of the said National Prohibition Act, and the said George Blake then and there stated to affiant that he was the owner of the said intoxicating liquor so seized. That thereafter on said 26th day of December, 1922, approximately one-half hour after the above said arrest, the defendant, Charles Forni, came to said premises and affiant then and there arrested the said defendant for a violation of the said National Prohibition Act, and the said Charles Forni then and there stated to affiant that he was the owner of the said intoxicating liquor so seized. That at all times herein mentioned said liquor was illicit and contraband.

That thereafter, and heretofore an information was filed charging the said George Blake and Charles Forni with having in their possession the above mentioned intoxicating liquor, all of which then and there contained one-half of one [56] per cent and more of alcohol by volume and then and there fit for use for beverage purposes.

D. W. RINKEL.

Subscribed and sworn to before me March 20, 1923.

[Endorsed]: Filed ——. W. B. Maling, Clerk.  
C. W. Calbreath, Deputy Clerk.

That upon the hearing of said petition and motion the search-warrant in question and the affidavit upon which it was procured were also produced and considered by the Court. Said search-warrant and affidavit are in words and figures as follows, to wit:

### SEARCH-WARRANT.

United States of America,  
Northern *Division* of California,  
Southern Division,—ss.

To the Federal Prohibition Director for the State  
of California and His Deputies, or Any or  
Either of Them, GREETINGS:

WHEREAS, complaint on oath and in writing supported by affidavits has this day been made before me Thomas E. Hayden, a United States Commissioner for said district, by D. W. Rinckel alleging that he has reason to believe that within a certain house, store, or building in this district, to wit: a certain basement garage at #2933 Webster Street, San Francisco, Calif., and an outhouse or shed on same lot in the rear, being the premises of parties unknown, there is located certain property, to wit: certain illicit liquors which is being used as a means of committing a misdemeanor, to wit: a violation of the National Prohibition Act of the Statutes of the United States.

And whereas the particular grounds or probable cause for the issuance of this warrant and the names

of the persons whose affidavit have been taken in support hereof are as follows:

That on the 26th day of December, 1922, your affiant visited the said premises and saw quantities of liquors, without evidence of tax being paid; that affiant has been informed that liquors are taken to and from said garage, both night and day; that affiant has reason to believe from said information and from inspection of said garage that liquors containing in excess of  $\frac{1}{2}$  per cent alcohol, illegally acquired, are stored and traded in from said garage.

And whereas the undersigned is satisfied of the existence of the grounds of said application, or that there is probable cause to believe their existence.

YOU ARE THEREFORE HEREBY COMMANDED, in the name of the President of the United States, to enter said premises at any time of the day or night with the necessary and proper assistance, and forthwith search the same, if found, bring before the undersigned, and to report and act concerning the same as required of you by law.

[57]

Witness my hand and seal this 26th day of December, 1922.

(Signed) THOMAS E. HAYDEN,

United States Commissioner as Aforesaid.

San Francisco, Calif., Dec. 26th, 1922.

I have this day searched the within described premises and found, to wit:

25 cases of Scotch whiskey.

5- 50 gallon bbls of whiskey.

- 1- 50 gallon bbl. of whiskey containing about 4  
in the bottom.
- 1- 50 gallon bbl. part full of Sherry wine.
- 18- 50 gallon bbls. of red wine,
- 2-175 gallon Puncheons of red wine,
- 1- 10 gallon bbl. of alcohol.
- 1- 5 gallon can of alcohol.
- 2- 50 gallon bbls. of grape brandy,
- 11- 5 gallon jugs of wine.
- 93 quart bottles of red wine.
- 1- 2 jug of white wine.
- 15 empty gallon bbls.
- 1 Hydrometer and glass tube.

D. W. RINCKEL,  
Federal Agent.

United States of America,  
Northern District of California,  
Southern Division,—ss.

On this 26th day of December, 1922, before me, Thomas E. Hayden, a United States Commissioner for the Northern District of California, Southern Division, personally appeared D. W. Rinckel, who, being by me first duly sworn, did depose and say:

That he has reason to believe, and does believe, that within a certain house, store, building, or other place, in this Northern District of California, to wit:

A certain basement garage at #2933 Webster Street, San Francisco, Calif., and an outhouse or shed on same lot in the rear, being the premises of parties unknown, there is located certain property, to wit, illicit liquors, which is being used as the means of committing a felony, to wit: a viola-

tion of the National Prohibition Act of the statutes of the United States; that the facts tending to establish the grounds of this application, and the probable cause of deponent believing that such facts exist are as follows,

That this affiant on the 26th day of December, 1922, visited said premises and saw quantities of liquors, without evidence of tax being paid; that affiant has been informed that liquors are taken to and from said garage, both night and day; that affiant has reason to believe from said information and from inspection of the said garage that liquors in excess of  $\frac{1}{2}$  per cent alcohol illegally acquired, are stored and traded in from this garage.

(Signed) D. W. RINCKEL.

Sworn to before me this 26th day of December, 1922.

(Signed) THOMAS E. HAYDEN.

THOMAS E. HAYDEN,  
United States Commissioner. [58]

#### EXCEPTION No. 2.

That after hearing had on said motion and petition for the return of personal property and exclusion of evidence the Court denied said petition and motion, to which ruling the defendant duly excepted.

That upon the trial of said cause on the 10th day of April, 1924, the following proceedings were had:

The CLERK.—This case is against Charles Forni and James Blake. Which of the defendants is absent?



The COURT.—Is the defendant Blake here?

The CLERK.—He was around here; Blake has been around and pleaded not guilty.

The COURT.—Is the defendant Blake here?

Mr. O'NEILL.—I am advised by his codefendant that he is a seafaring man and is at sea. He is expected here in a few weeks. I ask, as far as he is concerned, that the matter be continued.

The COURT.—It will not be continued. Forfeit his bail. Go ahead with the trial.

### TESTIMONY OF D. W. RINCKEL, FOR THE GOVERNMENT.

D. W. RINCKEL, called for the United States, being sworn, testified as follows:

Direct Examination by Mr. McDONALD.

I am and for 4 years prior to this date have been a prohibition officer. I have known Charles Forney, also known as "Slim Forney" as long as I have been on the prohibition force. I have arrested him several times.

#### EXCEPTION No. 3.

Q. About how many times, Mr. Rinckel?

Mr. HUDSON.—That is objected to as incompetent, irrelevant and immaterial. He is only charged here with this particular offense.

Mr. McDONALD.—He is charged with conducting a nuisance. [59]

The COURT.—The rule is well settled, that where the charge is that of maintaining a nuisance, involving the keeping for sale of intoxicating liquor,

(Testimony of D. W. Rinckel.)

previous offenses are admissible. The objection is overruled.

To which ruling of the Court the defendant in open court by his counsel then and there duly excepted.

I arrested him 4 or 5 times. I had occasion to go to No. 2933 Webster Street, San Francisco, on December 26, 1922.

EXCEPTION. No. 4.

Q. Why did you go there, Mr. Rinckel?

A. I got reports there was a large amount of liquor— [60]

Mr. HUDSON.—Objected to on the ground that it is hearsay, and I ask that it be stricken out.

The COURT.—Overruled.

To which ruling of the Court the defendant by his counsel then and there in open court duly excepted.

I went there with Agent Corey, the driver and another agent. The place is a residence house, with a garage underneath, and sheds in the back.

EXCEPTION No. 5.

Q. Did you observe anything when you went there on the 26th day of December, 1922?

A. Yes, sir.

Mr. O'NEILL.—Objected to on the ground that the proper foundation has not been laid. It must be shown first how this witness went there, whether he went there at the request of the defendants and how he got there.

(Testimony of D. W. Rinckel.)

The COURT.—Overruled.

To which ruling of the Court the defendant by his counsel then and there in open court duly excepted.

Mr. McDONALD.—Q. Did you go there on that day?

A. We were watching that place to get a delivery of liquor coming out of there; and a truck came out of there, and the agents searched the truck, and there was nothing on it, and to make sure that this informant was right, we went up there and made an investigation, and found this liquor in the back sheds. We first observed that from another lot, the liquor in the back shed, and climbed into the yard and saw into the basement and saw the liquor piled up there, and went to the United States Commissioner and got a search-warrant, and went back and seized the liquor.

EXCEPTION No. 6.

Q. The liquor seized, Mr. Rinckel, consisted of 25 cases of Scotch whiskey? A. Yes, sir.

Q. Two 50-gallon barrels of whiskey?

A. Yes, sir. [61]

Q. One 50-gallon barrel of whiskey?

A. Yes, sir.

Q. One 50-gallon barrel part full of Sherry wine?

A. Yes, sir.

Mr. HUDSON.—Objected to as incompetent, irrelevant and immaterial, and violative of the rights of the defendant, on the ground that the information was unlawfully obtained and illegally obtained.

(Testimony of D. W. Rinckel.)

The COURT.—Overruled.

To which ruling of the Court the defendant by his counsel then and there in open court duly excepted.

Mr HUDSON.—It was obtained in violation of the rights of the defendant under Section 25 of the so-called Prohibition Act.

The COURT.—Overruled.

To which ruling of the Court the defendant by his counsel then and there in open court duly excepted.

I found there two 175-gallon puncheons of red wine, one 10-gallon barrel of alcohol; a 5-gallon can of alcohol; two 50-gallon barrels of brandy; jugs of red wine, 93 quart bottles of red wine; 2 gallon jugs of white wine; a hydrometer and a glass tube. The defendant Forney was not present at the time but came in later. Blake was present. I talked with Blake first and when Forney came in I talked with him. Blake claimed the liquor until Forney came in and then Forney stated that it was his. I am familiar with various kinds of intoxicating liquor.

#### EXCEPTION No. 7.

Q. And did you observe the general color, appearance and qualities of this liquor, set forth in the information in this case?

A. It was intoxicating liquor.

Mr. O'NEILL.—We ask that that be stricken out on the ground that it states the conclusion of the

(Testimony of D. W. Rinckel.)

witness. And on the further ground that no proper foundation has been laid for the question. [62]

The COURT.—Motion denied.

To which ruling of the Court the defendant by his counsel then and there in open court duly excepted.

EXCEPTION No. 8.

Mr. McDONALD.—Q. Do you say from your experience as a prohibition officer and your experience with intoxicating liquor that all of this liquor contained over one-half of one per cent of alcohol by volume? A. Yes, sir.

Mr. O'NEILL.—The same objection and motion.

The COURT.—The same ruling.

To which ruling of the Court the defendant by his counsel then and there in open court duly excepted.

I placed Forney under arrest and subsequently filed an information.

Cross-examination by Mr. HUDSON.

This is a dwelling-house with a garage underneath and with outhouses, which were all enclosed with fences. I climbed over the fence and I could see into the basement and see the wine barrels and bottles there, which were in the shed from the adjoining yard and I climbed over the fence and could see into the basement. I saw no liquor being sold there. It was reported to our office that they were taking liquor in and out of there all of the time. The report came from a neighbor next door.

(Testimony of D. W. Rinckel.)

Q. (By the COURT.) You have made arrests of this man for violation of the prohibition law before?

A. Yes, sir, for bootlegging. He has what is known as "Slim's Fly Trap Restaurant" there.

As to where the liquor came from, I have only Forney's statement. He said he purchased Scotch whiskey from a boat which was lying outside. He bought the liquor "over the rail" outside; I mean by "over the rail" outside from a boat which was lying outside, that is the Scotch whiskey had been purchased over the rail [63] from outside.

The Government rests.

Whereupon the defendant to maintain the issue raised by his plea of "not guilty" introduced the following evidence:

#### TESTIMONY OF ENRICO BESOZZI, FOR DEFENDANT.

ENRICO BESOZZI, being sworn, testified on behalf of defendant, as follows:

Direct Examination by Mr. O'NEILL.

I have known Charles Forney for 17 or 18 years. I visited at the premises on Webster Street many times when his sister was keeping house for him. Q. Do you know who lived with him on the 26th of December, 1922? A. I could not say that, as to the time; I know his sister and know the house; it was prepared for him, his sister and brother, and when his sister was there I visited the house a lot

(Testimony of Enrico Besozzi.)

of the time, but at the end of this year I know nothing much about it. The sister got married, and then "Slim" lived there right along, and when you want the boy you can always get him there right along. I know he lived there right along. I know that the sister, his brother, and "Slim" lived there at the house at the time—the house was fixed for them. It had three rooms downstairs, two rooms upstairs and a garage. I have had meals there myself. There is a stove there, dishes and groceries and everything necessary to maintain a family. Forney was in the habit of sleeping there every night. It was his customary sleeping place. An automobile was kept in the basement and wood and coal in the shed.

Q. Do you know what was stored in the basement, in addition to this liquor taken from there; was there anything else ever there? A. I don't know anything about that. I know I go there and went upstairs. I didn't figure what was in the basement at all. Q. Did you have occasion to visit the out-house on the premises? A. I was there once. Q. Did you see anything there at all besides liquor? A. No, sir. [64]

Q. Did you ever see any groceries there? A. Back there?

A. I saw some wood; and they had coal and wood for the house; something like that.

Q. Wood and coal. And did the basement look like—from what opportunity you had of observing

(Testimony of Enrico Besozzi.)

it—did it look like as if an automobile had been stored there?

A. There was an automobile there; yes, sir.

Cross-examination by Mr. McDONALD.

I am a restaurant-keeper—The Fly Trap Restaurant, 73 Sutter Street. I never saw any liquor stored there. I saw groceries there but I never asked if there was liquor there.

TESTIMONY OF S. FORNI, FOR DEFENDANT.

S. FORNI, being sworn, testified as follows on behalf of defendant:

Direct Examination by Mr. O'NEILL.

The defendant is my brother. I wasn't at the Webster Street premises at the time the liquor was taken. I absolutely know these premises was his home.

EXCEPTION No. 9. [65]

The COURT.—This is all covered by the affidavit. What has this to do with the case before the jury?

Mr. O'NEILL.—It is our contention that this was taken from the private home of the defendant.

The COURT.—The point has been ruled on and against you. I will allow no testimony on that matter. The jury has nothing to do with the question of the search-warrant. They are to determine the facts. That is a question of law.

Mr. O'NEILL.—We take exception to the ruling of the Court.

Whereupon the defendant rested.



Argument having been waived by respective counsel the Court proceeded to instruct the jury as follows:

### INSTRUCTIONS OF COURT TO THE JURY.

The COURT.—(Orally.) You will bear in mind, that this defendant is presumed to be innocent of the charges made against him until he is proven guilty to a moral certainty and beyond a reasonable doubt. A reasonable doubt, as heretofore explained to you, is that kind of a doubt which would influence you in the important affairs of your own lives. In this case you will note that the defendant has not taken the stand in his own behalf. That is his constitutional right and privilege, and you are not in any way to consider his failure to be a witness in his own behalf, that is, to take the witness-stand in his own behalf, against him in any manner or form whatsoever. In other words, you will dismiss that from your minds entirely.

In this particular case, the information contains two counts or charges. The first count or charge is that he had in his possession certain alcoholic liquors, which have been described to you here, for the purpose of sale. In order to find him guilty on the first count, you must not only find he had the liquor there, but that he had it there for the purposes of sale; and in determining that you are entitled to take [66] into consideration the fact, if you find it to be a fact, the testimony of the witness Rinckel, that he has been arrested as a bootlegger before. Furthermore, you are instructed

that, under the prohibition law, the possession of liquor, intoxicating liquor, establishes a presumption that it was kept for sale, and the burden of the case is on the defendant to show that it was not kept there for sale.

As to the second count: If you should find he was in possession of the liquor, you must find him guilty upon that count.

You must find him either guilty or not guilty on each count of the two counts; and it requires an unanimous verdict at your hands. That applies to both of the defendants.

Are there any objections to the instructions?

#### EXCEPTION No. 10.

Whereupon the defendant excepted to the failure of the Court to give the following charge to the jury as theretofore requested:

If the premises in question were used and occupied by defendant as a private dwelling, to justify a verdict of guilty, you must find from the evidence, either that it was being used for the unlawful sale of intoxicating liquors or that it was used in part for some business purpose.

#### EXCEPTION No. 11.

Whereupon defendant excepted to the failure of the Court to give the following charge to the jury, as theretofore requested:

The term private dwelling includes the entire frame building in which the dweller resides as well as all buildings and outhouses situated within the common enclosure provided that the same are used

solely for the comfort and convenience of the dweller and are not used for any business. [67]

Whereupon the jury retired and thereafter returned a verdict of guilty as to the defendant Charles Forney.

That thereafter said Court rendered its sentence and judgment upon said defendant; that said proposed bill of exceptions was lodged on the 5th day of August, 1924, within legal time, and that the time of the plaintiff within which to prepare amendments thereto was by orders of Court, based upon stipulations of the parties, extended to and including the 1st day of October, 1924, and the time to settle the same was likewise extended to and including the 8th day of October, 1924.

That said defendant hereby presents the foregoing as his bill of exceptions herein and respectfully asks that the same be allowed, signed and sealed and made a part of the record in this case.

Dated this 8th day of October, 1924.

PRESTON & DUNCAN,  
H. S. YOUNG,  
R. G. HUDSON,  
FRANK T. O'NEILL,  
Attorneys for Defendant. [68]

IT IS HEREBY STIPULATED AND AGREED that the foregoing comprises all the proceedings and testimony had and taken upon the trial of said cause and that the same may be settled

and allowed by any judge of the above-entitled court.

PRESTON & DUNCAN,  
H. S. YOUNG,  
R. G. HUDSON,  
FRANK T. O'NEILL,

Attorneys for Defendant.

STERLING CARR,  
United States Attorney.

T. J. SHERIDAN,  
Asst. U. S. Attorney.

The foregoing bill of exceptions is hereby settled and allowed.

Dated this 8th day of October, 1924.

FRANK H. KERRIGAN,  
United States District Judge.

[Endorsed]: Filed Oct. 8, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.  
[69]

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In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 13,126.

THE UNITED STATES OF AMERICA

vs.

CHARLES FORNI and GEORGE BLAKE.

(VERDICT.)

We, the jury, find as to the defendants at the bar, as follows:

Charles Forni, Guilty on 1st Count and *and*  
Guilty on 2d Count.

George Blake, Guilty on 1st Count and Guilty on  
2d Count.

JOHN A. KEATING,  
Foreman.

[Endorsed]: Filed April 10, 1924, at 3 o'clock  
and 35 minutes P. M. W. B. Maling, Clerk. By  
T. L. Baldwin, Deputy Clerk. [70]

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In the Southern Division of the United States Dis-  
trict Court for the Northern District of Cali-  
fornia, First Division.

No. 13,126.

Convicted Viol. National Prohibition Act.

THE UNITED STATES OF AMERICA

vs.

CHARLES FORNI.

JUDGMENT ON VERDICT OF GUILTY.

J. F. McDonald, Assistant United States At-  
torney, and the defendant with his counsel came  
into court. The defendant was duly informed by  
the Court of the nature of the information filed on  
the 20th day of March, 1924, charging him with the  
crime of violating the National Prohibition Act;  
of his arraignment and plea of not guilty; of his  
trial and the verdict of the jury on the 10th day  
of April, 1924, to wit: "We, the Jury, find as to

the defendants at the bar as follows: Charles Forni, Guilty on 1st Count and Guilty on 2d Count. George Blake Guilty on 1st Count and Guilty on 2d Count. John A. Keating, Foreman.''

The defendant was then asked if he had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for a new trial and a motion in arrest of judgment; thereupon the Court rendered its judgment;

THAT, WHEREAS, the said Charles Forni having been duly convicted in this court of the crime of Violating National Prohibition Act;

IT IS FURTHER ORDERED AND ADJUDGED that the said Charles Forni be imprisoned for the period of One (1) Year and pay a fine in the sum of Five Hundred (\$500.00) Dollars as to the 1st Count; that he pay a fine in the sum of Five Hundred [71] (\$500.00) Dollars as to the second count. Further ordered that in default of the payment of said fines that said defendant be imprisoned until said fines be paid or until he be otherwise discharged in due course of law. Further ordered that said defendant be imprisoned in the County Jail, County of San Francisco, California.

Judgment entered this 10th day of April, 1924.

WALTER B. MALING

Clerk.

By C. W. Calbreath,

Deputy Clerk.

Entered in Vol. 16, Judg. and Decrees, at page 175. [72]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI and GEO. BLAKE,

Defendants.

PETITION FOR WRIT OF ERROR AND  
SUPERSEDEAS.

Now comes Charles Forni, one of the defendants herein, and says that on the 10th day of April, 1924, this Court rendered judgment herein against him in which judgment and proceedings had prior thereto in this cause, certain errors were permitted to the prejudice of the said defendant, all of which will more fully appear from the assignment of errors filed herewith.

WHEREFORE the said defendant prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors complained of, and that a transcript of the record in this cause, duly authenticated, may be sent to said Circuit Court of Appeals and that said defendant

be awarded a supersedeas upon said judgment and all necessary and proper process, including bail.

CHARLES FORNI,

Defendant.

PRESTON and DUNCAN,

H. S. YOUNG,

R. G. HUDSON,

Attorneys for Defendant. [73]

Due service and receipt of a copy of the within admitted this 30 day of September, 1924.

STERLING CARR,

Attorney for Plff.

[Endorsed]: Filed Oct. 7, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [74]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI and GEO. BLAKE,

Defendants.

#### ASSIGNMENT OF ERRORS.

Charles Forni, one of the defendants in the above-entitled cause, and plaintiff in error herein, having petitioned for an order granting him a



writ of error to this Court, directed from the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and sentence entered in said cause against said Charles Forni, now makes and files with his said petition the following assignment of errors herein, upon which he will apply for a reversal of said judgment and sentence upon the said writ, and which said errors and each of them, are to the great detriment, injury and prejudice of the said defendant and in violation of the rights conferred upon him by law; and he says that in the record and proceedings in the above-entitled cause, upon the hearing and determination thereof in the District Court of the United States for the Northern District of California, there is manifest error in this, to wit:

I.

The Court erred in denying the petition of defendant and plaintiff in error filed on March 13, 1923, for the return of certain personal property seized at the home of said defendant in violation of defendant's rights under the Fourth and Fifth Amendment to the Constitution of the United States. [75]

II.

The Court erred in denying the petition of defendant and plaintiff in error filed on April 7, 1923, for the exclusion from evidence of certain personal property seized at the home of said defendant in violation of defendant's rights under the Fourth and Fifth Amendments to the Constitution of the United States.

## III.

The Court erred in admitting over the objections of defendant and plaintiff in error, testimony as to the amount, and character of certain intoxicating liquors which had been seized and taken from defendant in violation of his constitutional rights as guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States, to which ruling defendant and plaintiff in error duly excepted.

## IV.

The Court erred in overruling the objection of the question "About how many times, Mr. Rinckel?" in this, that it was immaterial how many times defendant has been arrested.

## V.

The Court erred in overruling the objection to the question "Why did you go there, Mr. Rinckel?" in this, that the reasons which prompted the visit to the home of defendant by the agents were immaterial.

## VI.

The Court erred in overruling the objection to the question, "Did you observe anything when you went there on the 26th day of December, 1922?" in this, that it should first have been shown whether the officer visited the home of defendant at his request or for the purpose of making an illegal search and seizure, in which latter case his testimony should have been excluded for the reason that the subject matter thereof had been obtained in violation of the rights of the defendants as guar-

anted by the Fourth and Fifth Amendments to the Constitution of the United States. [76]

VII.

The Court erred in permitting the witness Rinckel to testify over the objection of defendant, as to his conclusions concerning the liquor seized, in this, said Rinckel did not qualify as a witness on this subject.

VIII.

The Court erred in refusing to permit the defendant to produce testimony concerning the character of the premises on Webster Street, in this, that defendant offered to prove that these premises constituted his dwelling place and as such were immune from search in this case.

IX.

The Court erred in refusing to instruct the jury as follows, to wit:

If the premises in question were used and occupied by defendant as a private dwelling, to justify a verdict of guilty, you must find from the evidence, either that it was being used for the unlawful sale of intoxicating liquors or that it was used in part for some business purpose.

X.

The Court erred in refusing to instruct the jury as follows, to wit:

The term private dwelling includes the entire frame building in which the dweller resides as well as all buildings and outhouses situated

within the common enclosure provided that the same are used solely for the comfort and convenience of the dweller and are not used for any business.

WHEREFORE, defendant prays that said judgment be reversed and that this action be remanded to the District Court of the United States in and for the Southern Division of the Northern District of California, with the direction to retry said action on all the issues raised by the pleadings herein.

PRESTON and DUNCAN,  
H. S. YOUNG,  
R. G. HUDSON,

Attorneys for Charles Forni, Defendant and Plaintiff in Error. [77]

[Endorsed]: Service and receipt of a copy of the within admitted this — day of —, 192—.

STERLING CARR,  
Attorney for —.

Filed Oct. 7, 1924. Walter B. Maling, Clerk.  
By C. W. Calbreath, Deputy Clerk. [78]

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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Tuesday, the 7th day of October, in the year of our Lord one thousand nine hundred and twenty-four. Present: the Honorable FRANK H. KERRIGAN, District Judge.

No. 13,126.

UNITED STATES OF AMERICA

vs.

CHARLES FORNI et al.

MINUTES OF COURT—OCTOBER 7, 1924—  
ORDER ALLOWING WRIT OF ERROR,  
ETC.

After hearing C. A. Linn, Esq., attorney for defendant and T. J. Sheridan, Asst. U. S. Atty., ordered that the petition for writ of error this day filed be and the same is hereby allowed and that citation issue. Further ordered that the application for the release of defendant on bond and supersedeas be and the same is hereby denied. [79]



In the Southern Division of the United States of  
America, for the Northern District of Cali-  
fornia, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI and GEORGE BLAKE,

Defendants.

ORDER EXTENDING TIME TO AND INCLUDING MAY 1, 1924, TO FILE BILL OF EXCEPTIONS.

Good cause appearing therefor, IT IS HEREBY ORDERED that the defendants, and each of them, be and they are, hereby allowed to and including the 1st day of May, 1924, in which to prepare, serve and file and lodge their, and each of their, proposed bill of exceptions.

Dated: April 19th, 1924.

FRANK H. KERRIGAN.

[Endorsed]: Filed Apr. 19, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[80]

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In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI et al.,

Defendants.

ORDER EXTENDING TIME TEN DAYS TO  
PREPARE, SERVE AND FILE BILL OF  
EXCEPTIONS.

Good cause appearing therefor, IT IS HEREBY ORDERED that the defendants, and each of them, be, and they are, hereby allowed ten days' further time from the date hereof in which to prepare, serve and file and lodge their, and each of their, proposed bill of exceptions.

Dated May 1, 1924.

FRANK H. KERRIGAN,  
U. S. District Judge.

[Endorsed]: Filed May 1, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[81]

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In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI et al.,

Defendants.

ORDER EXTENDING TIME TEN DAYS TO  
PREPARE, SERVE AND FILE BILL OF  
EXCEPTIONS.

Good cause appearing therefor, IT IS HEREBY ORDERED that the defendants, and each of them, be, and they are, hereby allowed ten days' further time from the date hereof in which to prepare, serve and file and lodge their, and each of their, proposed bill of exceptions.

Dated: May 12, 1924.

KERRIGAN,  
U. S. District Judge.

[Endorsed]: Filed May 12, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[82]

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In the Southern Division of the United States District Court, for the Northern District of the State of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI et al.,

Defendants.



STIPULATION AND ORDER EXTENDING  
TIME TEN DAYS TO PREPARE, SERVE  
AND FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED that the defend-  
ants, and each of them, may have ten (10) days'  
further time from the date hereof within which to  
prepare, serve and file their, and each of their, pro-  
posed bill of exceptions.

Dated: May 22d, 1924.

JOHN T. WILLIAMS,  
United States Attorney.  
By KENNETH M. GREEN,  
Sp. Asst. U. S. Atty.  
H. S. YOUNG,  
Attorney for Defendants.

So ordered.

FRANK H. RUDKIN,  
Judge.

[Endorsed]: Filed May 22, 1924. Walter B.  
Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[83]

In the District Court of the United States for the  
Northern District of California.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI et al.,

Defendants.

STIPULATION AND ORDER EXTENDING  
TIME TEN DAYS TO PREPARE, SERVE  
AND FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED  
by and between the respective parties hereto that  
the defendants, and each of them, be, and they are  
hereby, allowed ten (10) days' further time from  
date hereof in which to prepare, serve, file and lodge  
their and issue their proposed bill of exceptions.

Dated: June 2d, 1924.

UNITED STATES ATTORNEY.

By J. F. McDONALD,

H. S. YOUNG,

Attorneys for Defendants.

So ordered.

PARTRIDGE,

Judge.

[Endorsed]: Filed June 2, 1924. Walter B.  
Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI,

Defendant.

ORDER EXTENDING TIME TEN DAYS TO PREPARE, SERVE AND FILE BILL OF EXCEPTIONS.

Good cause appearing therefor, IT IS HEREBY ORDERED that the defendants, and each of them, be, and they are, hereby allowed ten days' further time from the date hereof in which to prepare serve and file and lodge their, and each of their, proposed bill of exceptions.

Dated: June 12, 1924.

FRANK H. KERRIGAN,  
U. S. District Judge.

Approved.

JOHN T. WILLIAMS,  
U. S. Attorney.  
By JOHN T. WILLIAMS.

[Endorsed]: Filed June 12, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI et al.,

Defendants.

ORDER EXTENDING TIME TEN DAYS TO  
PREPARE, SERVE AND FILE BILL OF  
EXCEPTIONS.

Good cause appearing therefor, IT IS HEREBY ORDERED that the defendants, and each of them, be, and they are, hereby allowed ten days' further time from the date hereof in which to prepare, serve and file and lodge their, and each of their, proposed bill of exceptions.

Dated June 21st, 1924.

JOHN S. PARTRIDGE,

U. S. District Judge.

[Endorsed]: Filed Jun. 21, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[86]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI et al.,

Defendants.

ORDER EXTENDING TIME TEN DAYS TO PREPARE, SERVE AND FILE BILL OF EXCEPTIONS.

Good cause appearing therefor, IT IS HEREBY ORDERED that the defendants, and each of them, be, and they are, hereby allowed ten days' further time from the date hereof in which to prepare, serve and file and lodge their, and each of their, proposed bill of exceptions.

Dated: July 1st, 1924.

PARTRIDGE,

U. S. District Judge.

[Endorsed]: Filed July 1, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[87]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI et al.,

Defendants.

ORDER EXTENDING TIME TEN DAYS TO  
PREPARE, SERVE AND FILE BILL OF  
EXCEPTIONS.

Good cause appearing therefor, IT IS HEREBY ORDERED that the defendants, and each of them, be, and they are, hereby allowed ten days' further time from the date hereof in which to prepare, serve and file and lodge their, and each of their, proposed bill of exceptions.

Dated: July 11th, 1924.

JOHN S. PARTRIDGE,

U. S. District Judge.

OK.—T. J. SHERIDAN,

Asst. U. S. Atty.

[Endorsed]: Filed Jul. 11, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI et al.,

Defendants.

ORDER EXTENDING TIME TEN DAYS TO  
PREPARE, SERVE AND FILE BILL OF  
EXCEPTIONS.

Good cause appearing therefor, IT IS HEREBY ORDERED that the defendants, and each of them, be, and they are, hereby allowed ten days' further time from the date hereof in which to prepare, serve and file and lodge their, and each of their, proposed bill of exceptions.

Dated: July 21st, 1924.

WM. W. MORROW,  
U. S. Circuit Judge.

O. K.—J. F. McDONALD,  
Asst. U. S. Atty.

[Endorsed]: Filed July 21, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

In the Southern Division of the United States District Court for the Northern District of the State of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,  
 Plaintiff,  
 vs.  
 CHARLES FORNI et al.,  
 Defendants.

STIPULATION AND ORDER EXTENDING  
 TIME FIVE DAYS TO PREPARE, SERVE  
 AND FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED that the defendants, and each of them, may have five (5) days' further time from the date hereof within which to prepare, serve and file their, and each of their, proposed bill of exceptions.

Dated: July 31st, 1924.

STERLING CARR,  
 United States Attorney.  
 J. F. McD.

So ordered.

PARTRIDGE,  
 Judge.

[Endorsed]: Filed Jul. 31, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.



In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI and GEO. CLAKE,

Defendants.

STIPULATION AND ORDER EXTENDING  
TIME TO AND INCLUDING AUGUST 15,  
1924, TO FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND  
AGREED that the defendants may have to and including the 15th day of August, 1924, within which to lodge and settle their bill of exceptions.

STERLING CARR,

U. S. Attorney.

By GROVE J. FINK,

Sp. Asst. U. S. Atty.

H. S. YOUNG,

Attorney for Defendants.

Approved.

KERRIGAN,

Judge.

[Endorsed]: Filed Aug. 5, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

In the District Court of the United States, for the  
Northern District of California.

No. 13,126.

UNITED STATES,

Plaintiff,

vs.

CHARLES FORNI,

Defendant.

STIPULATION AND ORDER EXTENDING  
TIME TO AND INCLUDING AUGUST 25,  
1924, TO FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND  
AGREED by and between the respective parties  
hereto that the defendant may have to and includ-  
ing the 25th day of August, 1924, within which to  
settle his bill of exceptions on file herein.

Dated: August 15, 1924.

STERLING CARR,

United States Attorney.

By GARTON D. KEYSTON,

Asst. U. S. Atty.

H. S. YOUNG,

Attorneys for Defendant.

So ordered.

KERRIGAN,

Judge.

[Endorsed]: Filed Aug. 16, 1924. Walter B.  
Maling, Clerk. By C. M. Taylor, Deputy Clerk.

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI and GEO. BLAKE,

Defendants.

STIPULATION AND ORDER EXTENDING  
TIME TO AND INCLUDING SEPTEMBER  
3, 1924, TO FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND  
AGREED that the defendants may have to and  
including the 3d day of September, 1924, within  
which to lodge and settle their bill of exceptions.

Dated: August 25th, 1924.

STERLING CARR,

U. S. Attorney.

By GARTON D. KEYSTON,

Asst. U. S. Atty.

H. S. YOUNG,

Attorney for Defendants.

Approved.

PARTRIDGE,

Judge.

[Endorsed]: Filed Aug. 25, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,  
 Plaintiff,  
 vs.

CHARLES FORNI and GEO. BLAKE,  
 Defendants.

STIPULATION AND ORDER EXTENDING  
 TIME TO AND INCLUDING OCTOBER 1,  
 1924, TO FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND  
 AGREED that the defendants may have to and including the 1st day of October, 1924, within which to lodge and settle their bill of exceptions.

STERLING CARR,  
 U. S. Attorney.

By GARTON D. KEYSTON,  
 H. S. YOUNG,  
 Attorney for Defendant.

Approved.

FRANK H. KERRIGAN,  
 Judge.

[Endorsed]: Filed Sep. 3, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI and GEO. BLAKE,

Defendants.

STIPULATION AND ORDER EXTENDING  
TIME TO AND INCLUDING OCTOBER 5,  
1924, TO FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND  
AGREED that the defendants may have to and including the 5th day of October, 1924, within which to lodge and settle their bill of exceptions.

STERLING CARR,

U. S. Attorney.

By T. J. SHERIDAN.

H. S. YOUNG,

Attorney for Defendants.

Approved.

KERRIGAN,

Judge.

[Endorsed]: Filed Oct. 1, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 13,126.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FORNI and GEO. BLAKE,

Defendants.

STIPULATION AND ORDER EXTENDING  
TIME TO AND INCLUDING OCTOBER 8,  
1924, TO FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND  
AGREED that the defendants may have to and including the 8th day of October, 1924, within which to lodge and settle their bill of exceptions.

STERLING CARR,

U. S. Attorney.

By T. J. SHERIDAN,

H. S. YOUNG,

Attorney for Defendants.

Approved.

MORROW,

Judge.

[Endorsed]: Filed Oct. 6, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[96]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT ON WRIT OF  
ERROR.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 96 pages, numbered from 1 to 96, inclusive, contain a full, true, and correct transcript of certain records and proceedings, in the case of United States of America vs. Charles Forni, No. 13,126, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on writ of error (copy of which is embodied herein), and the instructions of the attorneys for defendant and plaintiff in error herein.

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error is the sum of thirty-five dollars and twenty cents (\$35.20), and that the same has been paid to me by the attorneys for the plaintiff in error herein.

Annexed hereto are the original writ of error (page 98), return to writ of error (page 99) and original citation on writ of error (page 100).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 10th day of October, A. D. 1924.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,  
Deputy Clerk. [97]

## WRIT OF ERROR.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Charles Forni, plaintiff in error, and United States of America, defendant in error, a manifest error hath happened, to the great damage of the said Charles Forni, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.



WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 7th day of October, in the year of our Lord one thousand nine hundred and twenty-four.

[Seal]                      WALTER B. MALING,  
Clerk of the United States District Court, Northern  
District of California.

By Lyle S. Morris,  
Deputy Clerk U. S. District Court, Northern Dis-  
trict of California.

Allowed by:

FRANK H. KERRIGAN.

[Endorsed]: No. 13,126. United States District Court for the Northern District of California. Charles Forni, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed Oct. 7, 1924. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [98]

### RETURN TO WRIT OF ERROR.

The Answer of the Judges of the United States District Court, for the Northern District of California, to the within writ or error:

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.



WITNESS, the Honorable FRANK H. KERRIGAN, United States District Judge for the Northern District of California, this 7th day of October, A. D. 1924,

FRANK H. KERRIGAN,  
United States District Judge.

[Endorsed]: No. 13,126. United States District Court for the Northern District of California. Charles Forni, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed Oct. 7, 1924. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [100]

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[Endorsed]: No. 4355. United States Circuit Court of Appeals for the Ninth Circuit. Charles Forni, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, First Division.

Filed October 10, 1924.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

